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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,979	02/02/2007	Jacobus Johannes Van Dijk	72998-014400	5830

33717 7590 12/08/2009
GREENBERG TRAURIG LLP (LA)
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INTELLECTUAL PROPERTY DEPARTMENT
SANTA MONICA, CA 90404

EXAMINER

PAINTER, BRANON C

ART UNIT	PAPER NUMBER
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3635

NOTIFICATION DATE	DELIVERY MODE
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12/08/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/576,979	Applicant(s) VAN DIJK, JACOBUS JOHANNES	
	Examiner BRANON C. PAINTER	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davison (GB 2,341,833) in view of Brown, Jr. (6,098,335).

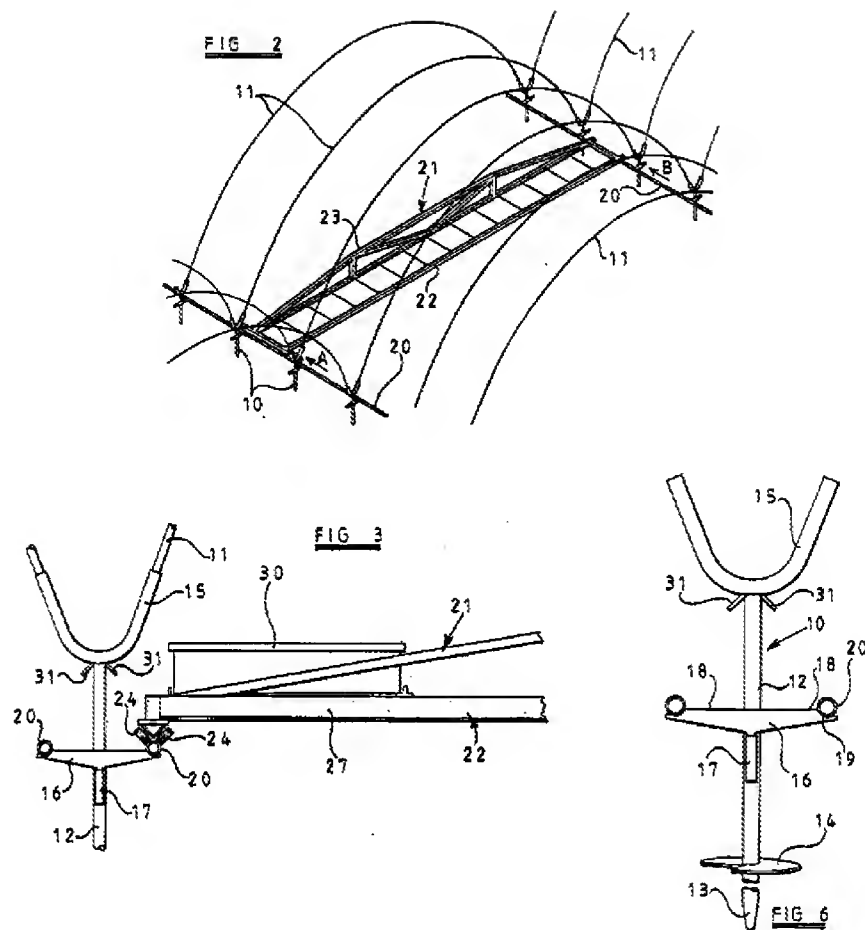
4. Regarding claim 1:

- a. Davison discloses a gantry system including:
 - i. A greenhouse construction (Fig. 2) comprising columns (10) and horizontal support members (21) spaced from the floor.
 - ii. A rail system (20) fixed to the horizontal support members (20 fixed to 21 via 24, Fig. 3) and imparting strength thereto.
 - iii. The rail system extending continuously over a distance of at least three successive columns (Fig. 2).

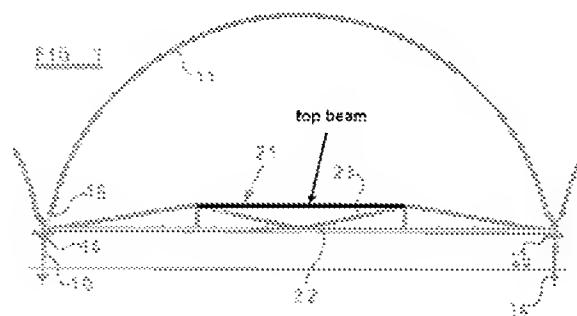
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- iv. The support members comprising longitudinal beams (21) comprising at least two longitudinal sections located some distance apart (22 and “top beam,” amended Fig. 1) and connected by link sections (23, Fig. 1).
 - v. The greenhouse having a roof construction bearing on said columns (11).
- b. Davison does not appear to expressly disclose vertical boundary walls.
 - c. Brown discloses that it is well-known to provide such greenhouse structures with vertical boundary walls (82, Fig. 1).
 - d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the greenhouse construction of Davison by adding vertical boundary walls as taught by Brown, in order to protect the plants inside from the elements and allow the moisture intake of such plants to be controlled.
 - e. The examiner notes the phrase “for moving...said area” is considered a recitation of intended use. As such, it is given little patentable weight. That said, the system disclosed by Davison could be used in such a way.

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Reproduced from Davison



Reproduced from Davison (amended)

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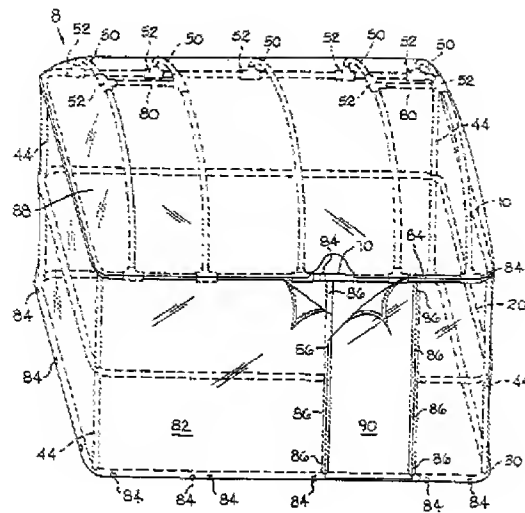
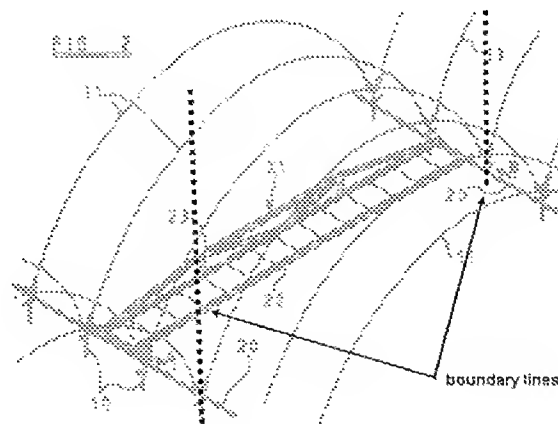


FIG. 1

Reproduced from Brown

5. Regarding claim 2, Davison/Brown as modified above discloses a greenhouse construction, with Davison further disclosing each roof bordering the subsequent roof along a boundary line that is perpendicular to the longitudinal beams and the rail system (amended Fig. 2).



Reproduced from Davison (amended)

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6. Regarding claim 3, Davison/Brown as modified above discloses a greenhouse construction, with Davison further disclosing a moveable carriage located on the rail system (containers that ride on the gantry, p. 4, 16-17).
7. Regarding claim 4, Davison/Brown as modified above discloses a greenhouse construction, with Davison further disclosing one rail of the rail system (20) fixed to one of the longitudinal sections (fixed to 22 via 24).
8. Regarding claim 5, Davison/Brown as modified above discloses a greenhouse construction, with Davison further disclosing means at the end of the rail system for moving a carriage in a direction perpendicular thereto (24, Fig. 3).
9. Regarding claim 8, Davison/Brown as modified above discloses a greenhouse construction, with Davison further disclosing a rail system with a power supply (p. 9, 4-7).
10. Regarding claim 9:
 - a. Davison/Brown as modified above discloses a greenhouse construction as set forth above, with Davison further disclosing a carriage with gripping/lifting means (the containers of Davison necessarily have walls, which can be used to grip and lift the carriage).
11. Regarding claim 1:
 - a. Davison discloses a gantry system including:
 - i. A greenhouse construction (Fig. 2) comprising columns (10) and horizontal support members (16) spaced from the floor.

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- ii. A rail system (20) fixed to the horizontal support members (16, Fig. 6).
 - iii. The rail system extending continuously over a distance of at least three successive columns (Fig. 2).
 - iv. The support members comprising longitudinal beams (16) comprising at least two longitudinal sections located some distance apart (16 at opposite sides of structure, Fig. 1) and connected by link sections (22).
 - v. The greenhouse having a roof construction bearing on said columns (11).
- b. Davison does not appear to expressly disclose vertical boundary walls.
 - c. Brown discloses that it is well-known to provide such greenhouse structures with vertical boundary walls (82, Fig. 1).
 - d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the greenhouse construction of Davison by adding vertical boundary walls as taught by Brown, in order to protect the plants inside from the elements and allow the moisture intake of such plants to be controlled.
 - e. The examiner notes the phrase “for moving...said area” is considered a recitation of intended use. As such, it is given little patentable weight. That said, the system disclosed by Davison could be used in such a way.
12. Regarding claim 6, Davison/Brown as modified above discloses a greenhouse construction, with Davison further disclosing horizontal support members

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comprising a ridge section (19) with a rail system (20) on which a construction that can be moved along it (27) is mounted.

13. Regarding claim 7, Davison/Brown as modified above discloses a greenhouse construction, with Davison further disclosing horizontal support members comprising a guttering section (19) with rail system (20) along which a construction fixed thereto (27) can be moved.

14. Regarding claim 10, Davison/Brown as modified above discloses a greenhouse construction, with Davison further disclosing link sections that join the parallel longitudinal sections in sawtooth fashion ("V" or sawtooth member at opposite ends of 22 connecting it to 16).

15. Regarding claim 12, Davison/Brown as modified above discloses a greenhouse construction, with Davison further disclosing a construction including two roofs (Fig. 2) with the rail system extending perpendicular to a boundary between the roofs (amended Fig. 2).

16. Regarding claim 11:

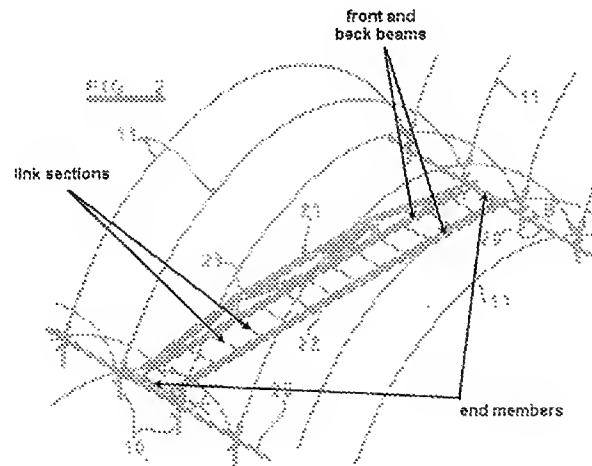
- a. Davison discloses a gantry system including:
 - i. A greenhouse construction (Fig. 2) comprising columns (10) and horizontal support members (21) spaced from the floor.
 - ii. A rail system (20) fixed to the horizontal support members and imparting strength thereto.

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- iii. The rail system extending continuously over a distance of at least three successive columns (Fig. 2).
 - iv. The support members comprising longitudinal beams (22) comprising at least two parallel longitudinal sections (front and back 22, Fig. 2).
 - v. A longitudinal section passing through at least two successive columns ("end members", amended Fig. 2.1).
 - vi. Link sections ("link sections", amended Fig. 2.1) joining together the longitudinal sections.
- b. Davison does not appear to expressly disclose vertical boundary walls.
- c. Brown discloses that it is well-known to provide such greenhouse structures with vertical boundary walls (82, Fig. 1).
- d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the greenhouse construction of Davison by adding vertical boundary walls as taught by Brown, in order to protect the plants inside from the elements and allow the moisture intake of such plants to be controlled.
- e. The examiner notes the phrase "for moving...thereon" is considered a recitation of intended use. As such, it is given little patentable weight. That said, the system disclosed by Davison could be used in such a way.
- f. Davison/Brown does not expressly disclose that the longitudinal section passes through at least three successive columns (rather, it teaches a section passing through two successive columns).

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- g. The examiner further notes that it would have been an obvious matter of design choice to modify the end members of Davison by making them long enough to span three successive columns, since applicant has not disclosed that such a length solves any stated problem or is for any particular purpose and it appears that the system of Davison/Brown would perform equally well.
- h. The examiner notes that where the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device is not patentably distinct from the prior art device. *MPEP 2144.04.*



Reproduced from Davison (amended Fig. 2.1)

Response to Arguments

17. Applicant's arguments filed 10/13/09 have been fully considered but they are not persuasive.

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18. Applicant argues that the combination supposedly provides no reasonable expectation of success, since the references supposedly give no indication of critical parameters or direction. However, Davison discloses a gantry system disclosing a majority of the claimed structure. Brown teaches that it is well-known in the art to provide such systems with vertical walls. The combination clearly provides a system meeting all claimed structure. Such a combination would not require “numerous choices in direction and experimentation...”, as it is quite clear how and why such a combination would be made.
19. Applicant suggests that the prior art gives only general guidance as to the particular claimed invention. However, the combination specifically discloses every recited claim element as claimed, not just a general greenhouse where the specifics are considered obvious.
20. Applicant argues that the inventors have discovered and claimed the optimum structure as opposed to general structures. The examiner notes yet again that every element of applicant’s “optimum structure” is disclosed by the combination of references as obvious and well-known in the art.
21. Applicant suggests that there are omissions from the cited references relative to the present claims, and that the references teach against substitution or combination. However, applicant has wholly failed to provide examples or specific citations of such statements in the prior art. This and other arguments by applicant amount to a mere allegation of patentability.

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22. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.
23. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.
24. The examiner notes that throughout the arguments (with the exception of the statement of rejection), applicant never so much as mentions the prior art references used in the rejection, and certainly does not argue against them in any specific context. All the arguments provided are allegations of patentability, and applicant has failed to address the differences, if any, between applicant's invention and the prior art rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANON C. PAINTER whose telephone number is (571)270-3110. The examiner can normally be reached on Mon-Fri 7:30AM-5:00PM, alternate Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rich Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. C. P./
Examiner, Art Unit 3635
/Basil Katcheves/
Primary Examiner, Art Unit 3635